

## Department of Defense

## 219.804-2

### Subpart 219.8—Contracting With the Small Business Administration (The 8(a) Program)

#### 219.800 General.

(a) By Partnership Agreement (PA) dated February 1, 2002, between the Small Business Administration (SBA) and the Department of Defense (DoD), the SBA delegated to the Under Secretary of Defense (Acquisition, Technology, and Logistics) its authority under paragraph 8(a)(1)(A) of the Small Business Act (15 U.S.C. 637(a)) to enter into 8(a) prime contracts, and its authority under 8(a)(1)(B) of the Small Business Act to award the performance of those contracts to eligible 8(a) Program participants. However, the SBA remains the prime contractor on all 8(a) contracts, continues to determine eligibility of concerns for contract award, and retains appeal rights under FAR 19.810. The SBA delegates only the authority to sign contracts on its behalf. Consistent with the provisions of this subpart, this authority is hereby redelegated to DoD contracting officers within the United States or its outlying areas, to the extent that it is consistent with any dollar or other restrictions established in individual warrants. This authority expires on September 30, 2006.

(b) Contracts awarded under the PA may be awarded directly to the 8(a) participant on either a sole source or competitive basis. An SBA signature on the contract is not required.

(c) Notwithstanding the PA, the contracting officer may elect to award a contract pursuant to the provisions of FAR Subpart 19.8.

[67 FR 11436, Mar. 14, 2002, as amended at 69 FR 58354, Sept. 30, 2004; 70 FR 35545, June 21, 2005; 70 FR 57191, Sept. 30, 2005]

#### 219.803 Selecting acquisitions for the 8(a) Program.

(b) Contracting activities should respond to SBA requests for contract support within 30 calendar days after receipt.

(c) Before considering a small business set-aside, review the acquisition for offering under the 8(a) Program.

[56 FR 36353, July 31, 1991, as amended at 63 FR 41974, Aug. 6, 1998]

#### 219.804 Evaluation, offering, and acceptance.

##### 219.804-1 Agency evaluation.

(f) The 8(a) firms should be offered the opportunity to give a technical presentation.

[63 FR 41974, Aug. 6, 1998]

##### 219.804-2 Agency offering.

(1) For requirements processed under the PA cited in 219.800 (but see paragraph (2) of this subsection for procedures related to purchase orders that do not exceed the simplified acquisition threshold), the notification to the SBA shall clearly indicate that the requirement is being processed under the PA. All notifications should be submitted in writing, using facsimile or electronic mail, when possible, and shall specify that—

(i) Under the PA, an SBA acceptance or rejection of the offering is required within 5 working days of receipt of the offering; and

(ii)(A) For sole source requirements, an SBA acceptance shall include a size verification and a determination of the 8(a) firm's program eligibility, and, upon acceptance, the contracting officer will solicit a proposal, conduct negotiations, and make award directly to the 8(a) firm; or

(B) For competitive requirements, upon acceptance, the contracting officer will solicit offers, conduct source selection, and, upon receipt of an eligibility verification, award a contract directly to the selected 8(a) firm.

(2) Under the PA cited in 219.800, no separate agency offering or SBA acceptance is needed for requirements that are issued under purchase orders that do not exceed the simplified acquisition threshold. After an 8(a) contractor has been identified, the contracting officer shall establish the prices, terms, and conditions with the 8(a) contractor and shall prepare a purchase order consistent with the procedures in Part 213 and FAR Part 13, including the applicable clauses required by this subpart. No later than the day that the purchase order is provided to the 8(a) contractor, the contracting officer shall provide to the cognizant SBA Business Opportunity Specialist, using facsimile, electronic mail, or any

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other means acceptable to the SBA district office—

(i) A copy of the signed purchase order; and

(ii) A notice stating that the purchase order is being processed under the PA. The notice also shall indicate that the 8(a) contractor will be deemed eligible for award and will automatically begin work under the purchase order unless, within 2 working days after SBA's receipt of the purchase order, the 8(a) contractor and the contracting officer are notified that the 8(a) contractor is ineligible for award.

(3) The notification to SBA shall identify any joint venture proposed for performance of the contract. SBA shall approve a joint venture before award of an 8(a) contract involving the joint venture.

(4) For competitive requirements for construction to be performed overseas, submit the notification to SBA Headquarters.

[67 FR 11437, Mar. 14, 2002, as amended at 67 FR 49256, July 30, 2002]

### 219.804-3 SBA acceptance.

For requirements processed under the PA cited in 219.800, SBA's acceptance is required within 5 working days (but see 219.804-2(2) for purchase orders that do not exceed the simplified acquisition threshold).

[63 FR 33587, June 19, 1998, as amended at 67 FR 11436, Mar. 14, 2002]

### 219.805 Competitive 8(a).

#### 219.805-1 General.

(b)(2)(A) For acquisitions that exceed the competitive threshold and use fiscal year 2004 or 2005 appropriated funds, the SBA also may accept the requirement for a sole source 8(a) award on behalf of a small business concern owned by a Native Hawaiian Organization (Section 8021 of Pub. L. 108-87 and Section 8021 of Pub. L. 108-287).

(B) *Native Hawaiian Organization*, as used in this subsection and as defined by 15 U.S.C. 637(a)(15) and 13 CFR 124.3, means any community service organization serving Native Hawaiians in the State of Hawaii—

(1) That is a not-for-profit organization chartered by the State of Hawaii;

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(2) That is controlled by Native Hawaiians; and

(3) Whose business activities will principally benefit such Native Hawaiians.

[70 FR 43073, July 26, 2005]

### 219.805-2 Procedures.

(c) For requirements processed under the PA cited in 219.800—

(i) For sealed bid and negotiated acquisitions, the SBA will determine the eligibility of the firms and will advise the contracting officer within 2 working days after its receipt of a request for an eligibility determination; and

(ii) For negotiated acquisitions, the contracting officer may submit a request for an eligibility determination on all firms in the competitive range if discussions are to be conducted, or on all firms with a realistic chance of award if no discussions are to be conducted.

[63 FR 33588, June 19, 1998, as amended at 67 FR 11436, Mar. 14, 2002]

### 219.806 Pricing the 8(a) contract.

For requirements processed under the PA cited in 219.800—

(1) The contracting officer shall obtain cost or pricing data from the 8(a) contractor, if required by FAR subpart 15.4; and

(2) SBA concurrence in the negotiated price is not required. However, except for purchase orders not exceeding the simplified acquisition threshold, the contracting officer shall notify the SBA prior to withdrawing a requirement from the 8(a) Program due to failure to agree on price or other terms and conditions.

[63 FR 33588, June 19, 1998, as amended at 67 FR 11437, Mar. 14, 2002; 67 FR 49256, July 30, 2002]

### 219.808 Contract negotiations.

#### 219.808-1 Sole source.

For requirements processed under the PA cited in 219.800—

(1) The agency may negotiate directly with the 8(a) contractor. The contracting officer is responsible for initiating negotiations;